

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 12556 of 2005
WITH
SPECIAL CIVIL APPLICATION No. 12558 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
- 2 To be referred to the Reporter or not ?
- 3 Whether their Lordships wish to see the fair copy of the judgment ?
- 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
- 5 Whether it is to be circulated to the civil judge ?

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RAJKOT TEXTILE MILLS - Petitioner(s)

Versus

C.A.NATHWANI - Respondent(s)

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Appearance :

NANAVATI & NANAVATI for Petitioner No(s).: 1.

MS RV ACHARYA for Respondent No(s).: 1.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 24/08/2005

COMMON ORAL JUDGMENT

1.In both these petitions, the common petitioner-Rajkot Textile Mills (A Unit of National Textile Corporation

(Gujarat) Ltd.) has challenged the legality and validity of the common judgment and order passed by the Labour Court, Rajkot dated 4.11.2004 passed in Recovery Application Nos.1606/1985 and 1607/1985.

2.It appears from the record that the respondent workman had filed two Recovery Applications being Recovery Application Nos.1606/1985 and 1607/1985 before the Labour Court, Rajkot under Section 33-C(2) of the I.D. Act for getting the differences in salary, bonus, leave encashment, provident fund, free sell cloth, deposit and allowances, contending inter-alia that while he was on duty and during the period till his reinstatement (as he was dismissed earlier), he is entitled to the said amount towards the aforesaid claims. The aforesaid two Recovery Applications came to be opposed by the petitioner on the ground that in view of the order passed by the Hon'ble Supreme Court in Special Leave Petition (Civil) No.373/1980 and Civil Appeal No.2965(NL)/1983 dated 22.2.1983 by which the petitioner was directed to pay 75% of the amount deposited by the petitioner towards the backwages in full and final settlement of claim for backwages, such Recovery Applications are not maintainable. The Labour Court, Rajkot by impugned common judgment and order

dated 4.11.2004 partly allowed the said Recovery Applications by directing the petitioner to pay an amount of Rs.6373/- with 9% interest towards the differences in salary/wages and the said interest to be paid at the rate of 9% for the period between 2.2.1980 to 31.3.1990 and further directed to pay 12% interest on the deposit of Rs.2500/- for the period between 1.8.1976 to 30.1.1993 and 9% interest on the amount of Rs.6478.43 ps. paid towards bonus and earned leave for the period between 22.2.1983 to 29.1.1993. Being aggrieved and dissatisfied with the common judgment and order passed by the Labour Court, Rajkot passed in Recovery Application Nos.1606/1985 and 1607/1985, the petitioner has preferred the present Special Civil Applications.

3.Shri Shukla, learned advocate appearing on behalf of the petitioner has vehemently submitted that in view of the order passed by the Hon'ble Supreme Court granting Appeal by Special Leave being Civil Appeal No.2965(NL)/1983 dated 22.2.1983, by which, the petitioner was directed to pay 75% of the amount towards the backwages and final settlement of his claim, the Labour Court has materially erred in allowing the aforesaid Recovery Applications as the Hon'ble Supreme Court wanted to

settle the dispute on payment of 75% of the amount of backwages as full and final settlement and therefore, it is requested to allow both the applications.

4. Earlier Ms. R.V. Acharya, learned advocate appearing on behalf of the respondent workman argued and thereafter sought time to get instructions from her client and now today, Ms. Heena Desai, learned advocate has submitted that she has instruction to appear on behalf of the respondent workman and has argued the matter on merits. However, she is not in a position to justify the claim before the Labour Court by way of Recovery Applications considering the judgment of the Hon'ble Supreme Court dated 22.2.1983 passed while granting Special Leave being Civil Appeal No.2965(NL)/1983 by which the petitioner was directed to pay 75% of the backwages to the respondent for full and final settlement of claim for the backwages and also she is not in a position to satisfy this Court that said Recovery Applications were maintainable inspite of the order of the Hon'ble Supreme Court.

5. Heard the learned advocates appearing on behalf of the parties.

6. It appears from the record that the respondent was

discharged from the service of the petitioner Mills and therefore, he had filed application being Application No.117/1975 under the B.I.R. Act for reinstatement and the Labour Court, Rajkot granted reinstatement with full backwages with continuity of service. It also appears from the record that the judgment and award passed by the Labour Court, Rajkot was challenged before the Industrial Court, Ahmedabad by way of Appeal (IC) No.24/1978 which was allowed and the order passed by the Labour Court, Rajkot was set aside. It also appears from the record that the respondent workman challenged the order passed by the Industrial Court, Ahmedabad before this Court by way of Special Civil Application No.1550/1979 which came to be allowed and the order passed by the Industrial Court was set aside. It also appears from the record that petitioner Mills preferred Special Leave Appeal (Civil) No.373/1980 before the Hon'ble Supreme Court and initially the petitioner Mills was directed to deposit the entire amount of backwages in the Labour Court at Rajkot and accordingly, the petitioner Mills deposited the entire amount of backwages in the Labour Court. It also appears from the record that the Hon'ble Supreme Court granted Appeal by Special Leave being Civil Appeal No.2965(NL)/1983 dated 22.2.1983 and it was

directed to pay 75% of the deposited amount to the respondent workman in full and final settlement of the claim of respondent workman for the backwages and refunded the remaining 25% of the deposited amount to the petitioner Mills. In view of the above and on payment of 75% of the backwages in full and final settlement as per the order passed by the Hon'ble Supreme Court, there was no further claim subsisting on behalf of the respondent and therefore, the Recovery Applications were not maintainable at all and even if maintainable, the Labour Court is not justified in entertaining the claim and directing the petitioner to pay the aforesaid amount of interest, difference in salary, etc. Under the circumstances and considering the judgment and order passed by the Hon'ble Supreme Court as stated above, common judgment and order passed by the Labour Court, Rajkot dated 4.11.2004 passed in Recovery Applications Nos.1606/1985 and 1607/1985 cannot be sustained and the same is required to be quashed and set aside.

7. For the reasons stated above, both the petitions succeed. The common judgment and order passed by the Labour Court Rajkot dated 4.11.2004 passed in Recovery Applications Nos.1606/1985 and 1607/1985 are hereby

quashed and set aside.

8. Rule is made absolute to the aforesaid extent, in each of the matter, however, there will be no order as to costs.

(M.R.SHAH, J.)

kdc.